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E.O. 12958: DECL: 11/02/2019

TAGS: KACT MARR PARM PREL RS US START

SUBJECT: START FOLLOW-ON NEGOTIATIONS, GENEVA (SFO-GVA-VI):  
TREATY TEXT WORKING GROUP MEETING, OCTOBER 21, 2009

REF: GENEVA 0875 (SFO-GVA-V-042)

Classified By: A/S Rose E. Gottemoeller, United States  
START Negotiator. Reasons: 1.4(b) and (d).

11. (U) This is SFO-GVA-VI-011.

12. (U) Meeting Date: October 21, 2009  
Time: 3:00 - 6:00 P.M.  
Place: U.S. Mission, Geneva

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SUMMARY  
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13. (S) On Wednesday, October 21, 2009, at 3:00 P.M., a meeting of the START Follow-on (SFO) Treaty Text and Definitions Working Group (TTDWG) took place at the U.S. Mission. The TTDWG was chaired by Ambassador Ries on the U.S. side and Mr. Koshelev on the Russian side. The meeting began with discussion of the draft treaty's final provisions, which include withdrawal and extension. The sides reached agreement on the extension provision but remained in discord over the withdrawal clause.

14. (S) Ms. Kotkova presented the Russian side's response to the U.S.-proposed joint draft text (JDT) on the Bilateral Consultative Commission (BCC). The sides were able to agree on most provisions, but the Russian side reserved on the issue of provisional application. The sides agreed to leave brackets around the section of the draft protocol dealing with convening a special session of the BCC.

15. (S) Finally, Adm Kuznetsov delivered a proposal, based on his personal experience negotiating START, on how to tackle the issue of terms and definitions by forming a subgroup to discuss and resolve differences. Ries took his proposal for further consideration.

16. (U) SUBJECT SUMMARY: Discussion of Previously Exchanged Texts for Final Provisions; BCC Protocol Dj Vous; and How to Address Terms and Definitions.

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DISCUSSION OF PREVIOUSLY  
EXCHANGED TEXTS FOR FINAL  
PROVISIONS  
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17. (S) Ries began the meeting by introducing revised language on treaty extension (Article XV of the U.S. draft text). She explained that the new formulation eliminated the phrase "at any time" since its absence implied that a Party could raise the issue of extension at any time. Koshelev queried Ries on the meaning and application of the phrase "so decide" listed in the last sentence. Ries commented that the phrase referred to the Parties having decided to extend the treaty, not to jointly consider the matter of extension.

18. (S) Koshelev asked whether the U.S. side had a new proposal on Treaty withdrawal. Ries said that the United States could not accept a Russian condition of withdrawal that is linked to a quantitative or qualitative buildup in the capabilities of strategic missile defense systems. Nor

could the United States accept the Russian proposal to terminate the treaty three months from receipt of a Party's statement of an extraordinary event as having jeopardized its supreme interest. (Begin comment: The U.S. proposal is six months. End comment.) Koshelev acknowledged that the TTDWG would not be able to resolve the issue, but asked Ries whether both sides could agree on the remaining text. Ries responded that if the Russians removed the phrase on conditional withdrawal, the United States could accept the rest of the paragraph as shown in the JDT.

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BCC PROTOCOL DJ VOUS  
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19. (S) Kotkova handed over a Russian-proposed JDT on the BCC and mentioned that, to a great extent, the Russian side had accepted U.S.-proposed language from the U.S.-proposed JDT of the BCC Protocol dated September 30, 2009 (REFTEL); however, there were a few provisions that would remain bracketed. Methodically, and at some length, Kotkova provided an analysis on each paragraph of the text. She emphasized that many differences were structural and once the sides had agreed on the treaty structure, many brackets could be removed.

10. (S) The following summarizes the content of Kotkova's analysis of the BCC by section and paragraph.

- Section I. Composition of the Commission

-- Paragraph 1. Difference was only an issue of structure.

-- Paragraph 2. Russian side accepted U.S.-proposed language.

-- Paragraph 3. This paragraph was carried forward from START's JCIC Protocol and dealt with the alternating chairmanship of meetings during a session, restrictions on what should be decided, and which Party should preside. An earlier sentence suggested that the "head representative," could be. Koshelev mentioned that these issues had never caused problems in the past, the heads of delegation could decide and this paragraph could be deleted in its entirety; Ries agreed to delete the paragraph.

-- Paragraph 4. The difference was structural (section versus sub-section).

- Section II. Convening a Session of the Commission

-- Paragraph 1, Subparagraph b. Added references to Commissioner and Deputy Commissioner to the request to convene a session.

-- Paragraph 2. This provision was acceptable to the Russian side as the United States had proposed.

-- Paragraph 3. Regarding the location of BCC sessions, Russia proposed "unless otherwise agreed" to replace "or, as appropriate, in another place agreed by the Parties" since it is shorter and used elsewhere in the BCC Protocol. Ries and Koshelev agreed to a new formulation proposed by Mr. Comeau that combines paragraphs 2 and 3 into a new sentence in the

paragraph: "A session of the Commission shall be convened in Geneva, Switzerland, and shall remain in session for no more than 15 days, unless otherwise agreed." Additionally, both sides confirmed their understanding that the provision "unless otherwise agreed" applied equally to the location where the commission is to be convened and the length of the session.

-- Paragraph 4. This provision was acceptable to the Russian side as proposed by the United States.

- Section III. Convening a Special Session of the Commission.

-- This entire provision was bracketed by the Russian side. Koshelev reiterated that this provision was supposed to respond to an urgent situation but in reality it had never been used. The Russian side believed the mechanism was inefficient since either Party had a period of 7 days in which to respond and up to 10 days to meet after a response, by which time the urgent matter would have passed. It would be more beneficial to address immediate concerns through the Commissioners' direct communication. Ries said the United States viewed the provision as a valuable mechanism and tool available to both sides which obligated the sides to have a meeting in the event a serious concern arose. Just because it had never been used did not mean it was not useful to have available. Ries said the U.S. side would consider the Russian points.

- Section IV. Agenda

-- Paragraph 1. The difference was an issue of the ultimate structure for the documents.

-- Paragraph 2. Regarding "immediately preceding or" with reference to questions which may arise before a meeting. Ries commented that, since this was already accommodated in Section I, paragraph 2, the United States was willing to delete the text. In the last sentence Russia proposed to retain the opportunity to agree during a session on the date of the next session. Ries deferred agreement until the United States had an opportunity to study the legal aspects and determine whether the right existed already in Section II, paragraph 2.

-- Paragraph 3. Russia proposed to delete this provision since it was spelled out in Section II, paragraph 1 that the Commission would meet no fewer than two times each year, unless otherwise agreed. The right to meet existed irrespective of the number of questions a Party proposes for the agenda. Ries agreed to delete this paragraph.

- Section V. Work of the Commission

-- Russia proposed to delete text referring to number, languages, and authenticity of the Commission's recorded agreements. After much discussion between Kotkova and Mr. Dean on the merits of retaining and deleting the text, Mr. Dunn provided the convincing argument. Dunn indicated that,

in his experience in other bilateral venues when documents were prepared in two languages without completing a formal conforming process, it was discovered after signature that there were errors in interpretation of the language. By including an obligation that in effect required the sides to complete a formal conforming process, it would avoid potential misunderstandings after BCC documents were agreed. The Russian side decided to leave the text in the paragraph as the United States had proposed.

- Section VI. Costs

-- Russian side had no differences with the U.S.-proposed text.

- Section VII. Communications

-- The first bracket was purely structural but the second bracket referring to the Nuclear Risk Reduction Centers (NRRC) could be reduced in length by deleting some of the explanatory text. Ries accepted the Russian proposal to delete "of the Russian Federation, and the Nuclear Risk Reduction Center of the United States of America" and making the reference to the NRRCs plural.

- Section VIII. Additional Procedures

-- Paragraph 1. This provision was acceptable to the Russian side as the United States had proposed.

-- The remaining paragraphs dealt exclusively with the concept of provisional application and would be solved simultaneously with the concept of provisional application for the treaty writ large. Dean clarified the intent behind paragraph 3; without provisional application of the treaty article, provisional application of a protocol on its own would not make sense. He further explained that the protocol drew its mandate from the treaty article whereas the procedures governing the operation of the BCC were in the protocol; this paragraph meant that both the treaty article and the protocol would operate provisionally in conformity with each other. Ries asked whether the Russian side had concerns with the content of the section. Kotkova said it was not a matter of the concept of provisional application but rather that Russia believed a decision should be taken when the concept of provisional application for the treaty as a whole was decided.

Kotkova said she would prepare a clean text of the document and hand it over to the U.S. side.

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HOW TO ADDRESS TERMS  
AND DEFINITIONS  
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¶11. (S) Regarding two U.S. non-papers on terms and definitions, Ries said the first list was based on those terms and definitions that the United States believed would be easily agreed upon by the United States and Russia since both sides had identical texts and the second list conveyed those terms on which the sides' proposals were relatively close. Kuznetsov claimed it was the first time he had seen the documents provided by the U.S. side but allowed that he was prepared to work in any format on any issue. Kuznetsov further proposed a mechanism and format to address terms and definitions. He proposed a TTDWG subgroup be formed to discuss the issue. Ries thanked Kuznetsov for his desire for efficiency, but mentioned the idea was new for the U.S. side

and the delegation would need to consider it.

¶12. (S) Ries said it was important to consider how the terms were used in the treaty because there might be different interpretations on both sides. Also, she mentioned that the TTDWG must continue to work through the treaty articles and it made sense to coordinate work on terms and definitions

with work on the treaty articles but also to allow for both to proceed simultaneously. She said there was a much shorter time to work on the terms and definitions than in the original START negotiations, but she would report Kuznetsov's suggestion, will discuss the proposal with her colleagues, and respond expeditiously.

¶13. (U) Documents exchanged.

- U.S.:

-- U.S. Non-Paper on Proposal for Discussion of Agreed Terms, October 21, 2009;

-- U.S. Non-Paper on Proposal of Terms for Discussion, October 21, 2009; and

-- U.S.-proposed Text, ((Article XV))1 ((XIV))2, Paragraph 2, October 21, 2009.

- Russia:

-- Russian-proposed Joint Draft Text on Section VI, Bilateral Consultative Commission, October 21, 2009.

¶14. (U) Participants:

U.S.

Amb Ries  
Lt Col Comeau  
Mr. Connell  
Mr. Dean  
Mr. Dunn  
Mr. DeNinno  
Mr. Taylor  
Mrs. Zdravecky  
Mr. Shkeyrov (Int)

RUSSIA

Mr. Koshelev  
Ms. Fuzhenkova  
Ms. Kotkova  
Mr. Kamenskiy  
Adm Kuznetsov  
Col Novikov  
Mr. Venevtsev  
Ms. Zharkih  
Mr. Gayduk (Int)

¶15. (U) Gottemoeller sends.

GRIFFITHS